

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JAMES LEE SMITH,

Plaintiff,

V.

MICHAEL GONZALEZ et al.,

Defendants.

Civil Action No. 16-2444 (SRC)

## ORDER

**CHESLER, District Judge**

This matter having come before the Court on the Complaint filed on April 29, 2016 by Plaintiff James Lee Smith (“Plaintiff”) [Docket Entry 1], together with an application to file Plaintiff’s Complaint without prepayment of fees and proceed *in forma pauperis* [Docket Entry 2]; and the Court having considered the papers filed; and for the reasons expressed in the Opinion filed herewith,

**IT IS** on this 20th day of May, 2016,

**ORDERED** that the Plaintiff's application to proceed *in forma pauperis* is **GRANTED** and the Clerk shall file the Complaint without prepayment of the filing fee; and it is further

**ORDERED** that, as to the excessive force, false arrest, false imprisonment, and malicious prosecution claims raised under 42 U.S.C. § 1983, Plaintiff's Complaint is

**DISMISSED WITHOUT PREJUDICE;** and it is further

**ORDERED** that Plaintiff may, within 30 days from this Order, respond in writing as to why the statute of limitations for his excessive force, false arrest, and false imprisonment claims shall be tolled, through the filing of an Amended Complaint;

**ORDERED** that, to the extent Plaintiff's Complaint challenges his underlying conviction, the Complaint is **DISMISSED WITH PREJUDICE**, for lack of jurisdiction; and it is further

**ORDERED** that, to the extent Plaintiff's Complaint challenges his underlying conviction, a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2) will not issue.

s/Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge